

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6664

BILL NUMBER: HB 1253

NOTE PREPARED: Dec 23, 2009

BILL AMENDED:

SUBJECT: Sale of Marked Goods.

FIRST AUTHOR: Rep. Truitt

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Municipal Licensing-* The bill provides that a municipality may adopt an ordinance that establishes licensing requirements for a person who uses a trademark or service mark in connection with the sale, offering for sale, distribution, or advertising of goods.

Criminal Penalty- The bill makes it a Class A misdemeanor to manufacture, display, advertise, distribute, offer for sale, sell, or possess with the intent to sell or distribute a good that bears or is identified by a counterfeit mark.

Effective Date: July 1, 2010.

Explanation of State Expenditures: *Criminal Penalty-* The bill provides for a Class A misdemeanor with an enhancement to a Class D felony in certain situations for the offense of counterfeiting a mark. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,194 in FY 2009. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Municipal Licensing-* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Criminal Penalty- The bill provides for a Class A misdemeanor with an enhancement to a Class D felony in certain situations for the offense of counterfeiting a mark. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000 and \$10,000 for a Class D felony. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

In addition, in both the municipal licensing and the counterfeiting a mark situations described above, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) would be deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: *Municipal Licensing-* If a municipality were to adopt an ordinance above, enforcement on persons deemed to be in violation could invite court action.

Criminal Penalty- A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Municipal Licensing-* If a municipality were to adopt an ordinance above, enforcement could result in court action. Courts could invoke civil penalties against a person if found to be in violation of a licensing ordinance. Civil penalties could range from \$2,500 for a first offense to more than \$7,500 for second or additional offenses.

If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record.

Criminal Penalty- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record.

In both the municipal licensing and the counterfeiting a mark situations described above, cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, DOC.

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